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Honorable Frederick P. Corbit
Chapter 7

4 Attorneys for U.S. Bank National Association
5
6

7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON

9 In re

10 GOLD DIGGER APPLES, INC.,
91-0348985

11 Debtor.
12
13

Case No. 16-01783-FPC7

DECLARATION OF DALE L.
WELKE

14 I, Dale L. Welke, do declare and state as follows:

15 1. I am a Senior Vice President of plaintiff U.S. Bank National
16 Association (“U.S. Bank.”). I make this declaration based on personal knowledge,
17 and I am competent to testify in this matter.

18 2. U.S. Bank is the holder of the promissory notes, mortgagee
19 under the mortgages, and grantee of the security interests described below.

20 3. Gold Digger Apples, Inc. (“Gold Digger”) is the maker of the
21 promissory notes, grantor under a mortgage on real property, and grantor of the
22 security interest in personal property as described below.

DECLARATION OF DALE L. WELKE - 1

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1 4. Kernan Orchards, Inc. (“Kernan”) is the grantor of a mortgage
2 on real property as described below.

3 5. On or about June 18, 2014, U.S. Bank and Gold Digger
4 executed the Second Amended and Restated Credit Agreement (the “Loan
5 Agreement”). A true copy of the Loan Agreement is attached hereto as Exhibit 1.

6 6. On or about June 18, 2014, pursuant to the Loan Agreement,
7 Gold Digger executed and delivered to U.S. Bank that certain Promissory Note
8 (2014 Orchard Loan) in the principal sum of \$5,035,000.00 (the “2014 Orchard
9 Loan”). A true copy of the 2014 Orchard Loan is attached hereto as Exhibit 2.

10 7. On or about June 18, 2014, pursuant to the Loan Agreement,
11 Gold Digger executed and delivered to U.S. Bank that certain Amended and
12 Restated Promissory Note (Term Loan) in the principal sum of \$7,875,779.02 (the
13 “Term Loan”). A true copy of the Term Loan is attached hereto as Exhibit 3.

14 8. On or about June 18, 2014, pursuant to the Loan Agreement,
15 Gold Digger executed and delivered to U.S. Bank that certain Amended and
16 Restated Promissory Note (PIK Interest Loan) in the principal sum of
17 \$2,058,044.94 (the “PIK Interest Loan”). A true copy of the PIK Interest Loan is
18 attached hereto as Exhibit 4.

19 9. On or about June 18, 2014, pursuant to the Loan Agreement,
20 Gold Digger executed and delivered to U.S. Bank that certain Security Agreement
21 in order to secure the Obligations (as defined in the Loan Agreement, including
22 without limitation the obligations thereunder and in the 2014 Orchard Loan, the

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1 Term Loan, and the PIK Interest Loan). Under the Security Agreement, Gold
2 Digger granted U.S. Bank a security interest in the Collateral as defined therein,
3 which includes at least the following:

4 “ . . . all accounts, cash, chattel paper, contract rights, copyrights,
5 crops, deposit accounts, documents, equipment, farm products,
6 financial assets, fixtures, general intangibles, goods, instruments,
7 insurance policies (including crop insurance policies and credit
8 insurance policies), intellectual property, inventory, investment
9 property, letter of credit rights, patents, securities, stock, trademarks,
10 trade names, and all products and proceeds (including insurance
11 proceeds) of all of the foregoing.

12 In addition, the word “Collateral” includes all records and data
13 relating to any of the property described in the preceding sentence,
14 whether in the form of a writing, photograph, microfilm, microfiche,
15 or electronic media, together with all of GDA’s right, title, and
16 interest in and to all computer software required to utilize, create,
17 maintain, and process any such records or data on electronic media.”

18 A true copy of the Security Agreement is attached hereto as Exhibit 5.

19 10. U.S. Bank is the secured creditor and the assignee of secured
20 creditors under UCC financing statements filed as early as August 4, 1989, and
21 multiple filings and amendments thereafter (the “Financing Statements”), which
22 currently remain in effect and describe the Collateral. True copies of the Financing
Statements are attached hereto as Exhibit 6. By virtue of the Financing Statements,
U.S. Bank has a perfected security interest in the types of Collateral in which a
security interest is perfected by filing.

11. The financing statement filed on August 4, 1989 specifically
describes, among other things, the following assets subject to U.S. Bank’s security
interest:

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1 “All buildings, structures, appurtenances, improvements,
2 equipment, machinery, fixtures, goods, accounts, general
3 intangibles, documents, instruments and chattel paper,
4 and all other personal property of every kind and
5 description, whether now existing or hereafter acquired,
6 now or at any time hereafter attached to, erected upon,
7 situated in or upon, forming a part of, appurtenant to,
8 used or useful in the construction or operation of or in
9 connection with, or arising from the use or enjoyment of
10 all or any portion of, or from any lease or agreement
11 pertaining to, [Gold Digger’s real property] . . .”

12 Except for 59 wine barrels and three specific items of equipment that were released
13 in 2002, this financing statement has remained in place continuously since it was
14 filed 1989.

15 12. The first financing statement filed on September 25, 1989,
16 specifically describes the following assets subject to U.S. Bank’s security interest:

17 “In all of Borrower’s accounts, chattel paper, documents,
18 instruments, general intangibles and leases and leasehold
19 interests, now existing or hereafter arising, and in all
20 proceeds thereof.
21 In all of Borrower’s inventory, including raw materials,
22 work in process and materials used or consumed in
Borrower’s business, either now owned or hereafter
acquired, and wherever located, including merchandise
and stock in trade, either in possession of the Borrower, a
warehouseman, a bailee, or any other person and all
products thereof, and all proceeds thereof.”

23 This financing statement has remained in place continuously since it was filed
24 1989.

25 13. The second financing statement filed on September 25, 1989,
26 specifically describes the following assets subject to U.S. Bank’s security interest:

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1 “Forty Thousand (40,000) Standard Box Bins, and all
2 Substitutions, additions, and accessions thereof or
 thereto.”

3 This financing statement has also remained in place continuously since it was filed
4 in 1989.

5 14. The financing statement filed on August 23, 1993, specifically
6 describes the following assets subject to U.S. Bank’s security interest:

7 “All Equipment, whether owned now or acquired later, all accessions,
8 additions, replacements, and substitutions, all records of any kind
9 relating to any of the foregoing, all proceeds (including insurance,
 general intangibles and accounts proceeds, together with the following
10 specifically described property: INCLUDING, BUT NOT LIMITED
 TO, ALL STANDARD BINS, ALL PACKING, STORAGE, AND
 HAULING EQUIPMENT.”

11 Except for 59 wine barrels and three specific items of equipment that were released
12 in 2002, this financing statement has remained in place continuously since it was
13 filed in 1993.

14 15. The financing statement filed on April 19, 1999, specifically
15 describes the following assets subject to U.S. Bank’s security interest:

16 “All Crops; whether any of the foregoing is owned now or acquired
17 later; whether any of the foregoing is now existing or hereafter raised
18 or grown; all accessions, additions, replacements, payments for
19 participation in any state or federal farm programs, and substitutions
20 relating to any of the foregoing (including all entitlements, rights to
21 payment, and payments, in whatever form received, including but not
22 limited to, payments under any governmental agricultural diversion
 programs, governmental agricultural assistance programs, the Farm
 Services Agency Wheat Feed Grain Program, and any other such
 program of the United States Department of Agriculture, or any other
 general intangibles or programs); all records of any kind relating to
 any of the foregoing; all proceeds relating to any of the foregoing
 (including insurance an accounts proceeds)”

DECLARATION OF DALE L. WELKE - 5

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1 This financing statement has remained in place continuously since it was filed in
2 1999.

3 16. On or about February 2, 1998, Gold Digger and Oro Fruit
4 Company (“Oro”), a Washington corporation, granted that certain Mortgage to
5 U.S. Bank, recorded on February 10, 1998, in the records of the Okanogan County
6 Auditor under instrument number 862066 (vol. 164 page 1892) (the “Gold Digger
7 Mortgage”) to secure certain obligations under a promissory note from Gold
8 Digger to U.S. Bank dated February 2, 1998, in the principal amount of
9 \$6,000,000.00. Oro has not been an active Washington corporation since January
10 25, 1999, and title is now vested entirely in Gold Digger. A true copy of the Gold
11 Digger Mortgage is attached hereto as Exhibit 7. On or about June 17, 2014, Gold
12 Digger and U.S. Bank entered into an Amendment of Mortgage, recorded on June
13 17, 2014, in the records of the Okanogan County Auditor under instrument number
14 3192389 (the “Gold Digger Mortgage Amendment”) to reflect that the Gold
15 Digger Mortgage continued to secure all amounts owed by Gold Digger to U.S.
16 Bank, including the 2014 Orchard Loan, the Term Loan, the PIK Interest Loan,
17 and two other promissory notes in the principal amount of \$3,000,000.00 each, and
18 any replacements thereof. A true copy of the Gold Digger Mortgage Amendment
19 is attached hereto as Exhibit 8. The Gold Digger Mortgage encumbers the real
20 property described in the Gold Digger Mortgage Amendment.

21 17. On or about May 19, 2000, Kernan granted that certain
22 Mortgage to U.S. Bank, recorded on June 12, 2000, in the records of the Okanogan

DECLARATION OF DALE L. WELKE - 6

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1 County Auditor under instrument number 3023290 (the “Kernan Mortgage”) to
2 secure certain obligations under a promissory note from Gold Digger to U.S. Bank
3 dated May 19, 2000, in the principal amount of \$846,000.00. A true copy of the
4 Kernan Mortgage is attached hereto as Exhibit 9. On or about June 17, 2014,
5 Kernan and U.S. Bank entered into an Amendment of Mortgage (Kernan
6 Orchards), recorded on June 17, 2014, in the records of the Okanogan County
7 Auditor under instrument number 3192388 (the “Kernan Mortgage Amendment”)
8 to reflect that the Kernan Mortgage continued to secure all amounts owed by Gold
9 Digger to U.S. Bank, including the 2014 Orchard Loan, the Term Loan, the PIK
10 Interest Loan, and two other promissory notes in the principal amount of
11 \$3,000,000.00 each, and any replacements thereof. A true copy of the Kernan
12 Mortgage Amendment is attached hereto as Exhibit 10. The Kernan Mortgage
13 encumbers the real property described in the Kernan Mortgage Amendment.

14 18. On or about February 18, 2015, Gold Digger and U.S. Bank
15 entered into that certain First Amendment to Second Amended and Restated Credit
16 Agreement and Waiver Agreement (the “First Amendment”). A true copy of the
17 First Amendment is attached hereto as Exhibit 11. Among other things, the First
18 Amendment resulted in the extension of the maturity date of the 2014 Orchard
19 Loan Note to April 15, 2015.

20 19. On or about April 15, 2015, Gold Digger and U.S. Bank entered
21 into that certain Second Amendment to Second Amended and Restated Credit
22 Agreement (the “Second Amendment”). A true copy of the Second Amendment is

DECLARATION OF DALE L. WELKE - 7

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1 attached hereto as Exhibit 12. The Second Amendment provided for Gold Digger
2 to execute two new promissory notes to replace the two \$3,000,000.00 notes
3 referenced in the Gold Digger Mortgage Amendment and the Kernan Mortgage
4 Amendment

5 20. On or about April 15, 2015, pursuant to the Second
6 Amendment, Gold Digger executed and delivered to U.S. Bank that certain
7 Promissory Note (Warehouse Loan) in the principal sum of \$3,000,000.00 (the
8 “Warehouse Loan”). A true copy of the 2015 Warehouse Note is attached hereto
9 as Exhibit 13.

10 21. On or about April 15, 2015, pursuant to the Second
11 Amendment, Gold Digger executed and delivered to U.S. Bank that certain
12 Promissory Note (2015 Orchard Loan) in the principal sum of \$5,600,000.00 (the
13 “2015 Orchard Loan”). A true copy of the 2015 Orchard Loan is attached hereto
14 as Exhibit 14.

15 22. Gold Digger defaulted on its Obligations (as defined in the
16 Gold Digger Mortgage and the Kernan Mortgage) to U.S. Bank by, among other
17 things, failing to pay when due amounts owing under the promissory notes. The
18 2014 Orchard Loan matured and became fully due and payable on November 30,
19 2015; the 2015 Orchard Loan and the Warehouse Loan, on December 15, 2015.
20 The failure to pay in full on the maturity date all amounts due under the 2014
21 Orchard Loan, the 2015 Orchard Loan, and the Warehouse Loan constituted an
22 Event of Default under Section 13.1(a) of the Loan Agreement. As a result of the

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1 Event of Default, U.S. Bank declared each of the Term Note and the PIK Interest
2 Note immediately due and payable pursuant to Section 13.2 of the Loan
3 Agreement. As permitted by Section 13.2 of the Loan Agreement, interest on the
4 full outstanding balance of each of the 2014 Orchard Loan, the 2015 Orchard
5 Loan, the Warehouse Loan, and the Term Loan began to accrue at the Default Rate
6 (as defined in the Loan Agreement), and interest on the full outstanding balance of
7 the PIK Interest Loan began to accrue and be payable at the Prime Rate plus 7.25
8 percent per annum. On March 4, 2016, U.S. Bank delivered a Notice of Event of
9 Default to Gold Digger to the foregoing effect. A true copy of the Notice of Event
10 of Default is attached hereto as Exhibit 15. Gold Digger has not satisfied its
11 Obligations to U.S. Bank.

12 23. An April 25, 2016, check made payable to Gold Digger and
13 drawn on the account of Hudson Insurance Company in the amount of
14 \$1,171,249.00 for crop insurance proceeds owed to Gold Digger was deposited
15 into Gold Digger's account at U.S. Bank on May 6, 2016. A true copy of the
16 Notice of Event of Default is attached hereto as Exhibit 16.

17 24. Because of the defaults by Gold Digger, there is owing under
18 the notes the following amounts as of May 26, 2016, the dated Gold Digger filed
19 its Voluntary Petition in this bankruptcy case:

20 a. 2014 Orchard Loan: The principal amount of
21 \$1,941,848.80, plus accrued and unpaid interest as of May 26, 2016, in the amount
22 of \$10,504.86. Interest continues to accrue on and after May 27, 2016.

DECLARATION OF DALE L. WELKE - 9

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1 b. Term Loan: The principal amount of \$7,531,332.32, plus
2 accrued and unpaid interest as of May 26, 2016, in the amount of \$47,175.43, and
3 late fees in the amount of \$2,480.47. Interest continues to accrue on and after May
4 27, 2016.

5 c. PIK Interest Loan: The principal amount of
6 \$2,058,044.94, plus accrued and unpaid interest as of May 26, 2016, in the amount
7 of \$51,008.07. Interest continues to accrue on and after May 27, 2016.

8 d. 2015 Orchard Loan: The principal amount of
9 \$4,058,000.00, plus accrued and unpaid interest as of May 26, 2016, in the amount
10 of \$21,952.65. Interest continues to accrue on and after May 27, 2016.

11 e. Warehouse Loan: The principal amount of
12 \$2,996,480.00, plus accrued and unpaid interest as of May 26, 2016, in the amount
13 of \$16,203.16. Interest continues to accrue on and after May 27, 2016.

14 f. The terms of the Loan Agreement, 2014 Orchard Loan,
15 Term Loan, PIK Interest Loan, 2015 Orchard Loan, Warehouse Loan, Gold Digger
16 Mortgage, and Kernan Mortgage provide for U.S. Bank to be entitled to an award
17 of its costs, fees, and out-of-pocket disbursement, including attorney fees, in
18 collecting on the Obligations and protecting the interests provided by the Gold
19 Digger Mortgage and the Kernan Mortgage. As of May 26, 2016, U.S. Bank has
20 incurred unpaid prepetition costs, fees, and out-of-pocket disbursement, including
21 attorney fees, in the amount of no less than \$59,001.72 in collecting on the
22

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obligations of Gold Digger and protecting the interests provided by the Gold
Digger Mortgage and the Kernan Mortgage that has not been repaid.

I declare under penalty of perjury of the laws of the State of
Wisconsin that the foregoing is true and correct.

EXECUTED this 20th day of June, 2016, at Milwaukee, Wisconsin.

/s/ Dale L. Welke
Dale L. Welke

DECLARATION OF DALE L. WELKE - 11

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1 I hereby certify that I served the foregoing DECLARATION OF
2 DALE L. WELKE on:
3 Thomas T Bassett tom.bassett@foster.com, jtnelson@gdicom.net,
4 gdachapter7@gmail.com, rsdv@hotmail.com, moser@gdicom.net,
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14 James B Zack zackj@lanepowell.com, jobityt@lanepowell.com;
15 stevensk@lanepowell.com; Docketing-SEA@LanePowell.com
16 by transmitting full, true, and correct copies thereof to the attorney through the
17 court's **Cm/ECF system** on the date set forth below.

18 DATED this 20th day of June, 2016.

19
20 /s/ Teresa H. Pearson
21 Teresa H. Pearson, P.C.
22 Washington State Bar No. 25889
Of Attorneys for Creditor
U.S. Bank National Association